

In the High Court of Punjab and Haryana at Chandigarh.

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Criminal Misc. No.49645-M of 2006

.....

Date of decision: 8.12.2006

Prem

---Petitioner

Vs.

State of Haryana and another

---Respondents

.....

Present: Mr.Surender Deswal, Advocate for the petitioner.

Mr. S.K.Hooda, Sr. DAG, Haryana for respondent-State.

S.S.Saron, J.

The petitioner has sought temporary release on parole in order to carry out agriculture operations.

Reply has been filed in which it is stated that the petitioner was convicted by the learned Additional Sessions Judge-II, Jind on 3.12.2005 for the offences under Sections 302, 323 and 34 IPC. The District Magistrate, Jind, it is stated, did not recommend the case of the petitioner for agriculture parole as it was found that apart from the petitioner, he has two sons who are able to cultivate the land. The report of the District Magistrate has been attached as Annexure R-1. Its perusal shows that the petitioner has three brothers and 13 acres of land falls to his share. Besides, there is apprehension of breach of peace in the village in case the petitioner is released on parole. Report of the Gram Panchayat (Annexure P-2), however, shows that the petitioner has his wife and minor

children in the family and they are incapable of doing agricultural work.

The High Court can exercise its powers of judicial review even in respect of criminal cases. The nomenclature under which a petition is filed is not quite relevant and it does not debar the Court from exercising its jurisdiction which it otherwise possesses unless there is a special procedure prescribed which is mandatory in nature. In exercise of its powers of administrative action the authorities concerned are to act with reasonableness, which inter alia enjoins that the decision making authority is liable to take into consideration all relevant and necessary material which is required to be taken into account in the decision making process and at the same time exclude all unnecessary material which is not necessary in the decision making process. Failure to take into account the necessary material would vitiate the order of the decision making authority.

In the case in hand, admittedly the report (Annexure P-2) of Gram Panchayat has not been taken into consideration. The same inter alia records that there is no member to cultivate the land except the convicts. It may be noticed that the other members of the family of the petitioner have also been convicted in the same occurrence. The said report (Annexure-P.2) also records that there are the wives and minor children in the family of the convicts who are incapable of cultivation. Besides, it is specifically mentioned that there is no apprehension of breach of peace in the village if the convicts in the case including the petitioner are released. The said report (Annexure-P.2) of the Gram Panchayat is necessary and relevant material which is liable to be taken into consideration in the decision making process and failure to take the same into account vitiates the decision of the authorities in not releasing the petitioner on prole. The

Director General of Prisons, Haryana, who is the competent authority for the purpose of considering the release of prisoners on parole in accordance with the provisions of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act' – for short) was liable to take into account the report of the Gram Panchayat which relates to the fact that there is no other member in the family who can carry out agricultural operations and also the fact that there was no likelihood of breach of peace in the event the convicts who have been convicted in the case are released.

In the circumstances, the Criminal Misc. is disposed of with the direction to respondent No. 1 to re-consider the case of the petitioner for temporary release on parole for agriculture purposes by taking into account all the relevant material that are necessary to be taken into account in the decision making process as also the report of the Gram Panchayat (Annexure P-2).

(S.S. Saron)
Judge

December 8, 2006.

paramjit/hsp